HALIMAH BT. HAMDAN

v.

ARIFFIN BIN SAIT (ADMINISTRATOR OF THE ESTATE OF HAJI HAMZAH BIN HAJI LATIP, DECEASED)

HIGH COURT SABAH & SARAWAK, KUCHING
PUAN ELIZABETH M. CHAPMAN JC
[SUIT NO. 22-33-95-III]
20 NOVEMBER 1995

CONTRACT: *Sale and purchase of land - Land sold after letters of administration granted - Letters of administration revoked - Whether revocation affects transaction - Whether contract breached - Whether transaction valid.*

PRACTICE & PROCEDURE: *Striking out of defence - Sale and purchase of land - Contract between plaintiff and administrator of deceased's estate - Letters of administration revoked - Contract made before revocation - Defendant as new administrator transferring land to third party - Suit for specific performance by plaintiff - Whether time barred - Whether time runs from the date letters of administration revoked.*

This was an application made by the plaintiff for an order that the statement of defence be struck out and judgment entered on the ground that the defendant's defence disclosed no reasonable defence, was scandalous, frivolous and vexatious and may prejudice, embarrass or delay the fair trial of the action.

The plaintiff had entered into an agreement with one Su'ud bin Haji Hamzah (Su'ud) for the purchase of part of the land belonging to Haji Hamzah bin Haji Latif (the deceased) after Su'ud was granted letters of administration to deal with the estate of the deceased. The plaintiff paid RM6,700 as deposit and part payment, the balance to be paid upon issuance of the title deed of the sub-lot, and lodged a private caveat on the said land. The letters of administration was however cancelled and the defendant appointed administrator. The defendant then entered into an arrangement for transfer of the said land to Ahmat bin Ghani, who subsequently applied for registration of the memorandum of transfer. The Assistant Registrar informed the plaintiff of the application.

It was contended by the defendant that the plaintiff was statute barred as the action should have been commenced upon the cancellation of the letters of administration.

Held:

[1] The revocation of the letters of administration was purely an administration act of the probate officer and does not constitute a breach of contract on the part of the said Su'ud bin Haji Hamzah.

[2] The agreement took place long before the revocation of the letters of administration. All conveyances of any interest in real or personal estate made to a purchaser by a person to whom probate or letters of administration have been granted are valid notwithstanding any subsequent revocation or variation of the probate or administration. The rights of the plaintiff accrued before such revocation.

[3] The plaintiff came to know that the defendant had entered into an arrangement for the transfer of the said land to Ahmat bin Ghani on 14 December 1994 when he was served with a notice issued by the Assistant Registrar of the Lands and Surveys Department, Kuching. Hence time for the institution of the suit for the specific performance of the contract against the defendant begins to run on 14 December 1994. The plaintiff is well within the three-year limitation period.

[Application allowed].

Legislation referred to:
Sarawak Limitation Ordinance (Cap. 49) Art. 90

Other source referred to:
Halsbury's Laws of England, 4th Edn., Vol. 17, para. 1069

For the plaintiff - Bexter Michael; M/s. Ee & Lim
For the defendant - Yap Yau Sin; M/s. Wan Junaidi & Co.

JUDGMENT

Elizabeth M. Chapman JC:

By a summons in chambers application the plaintiff is applying for an order that the statement of defence dated 15 July 1995 be struck out and judgment be accordingly entered as prayed for in the plaintiff's statement of claim. The grounds of the application are that:

(a) the defence does not disclose any reasonable defence; or

(b) the defence is scandalous, frivolous or vexatious or

(c) the defence may prejudice, embarrass or delay the fair trial of the action; or

(d) the said defence is otherwise an abuse of the process of Court.

The undisputed facts of the case are as follows:

Letters of administration were granted by the probate officer on 31 December 1962 to Su'ud bin Haji Hamzah to deal with the estate of Haji Hamzah bin Haji Latif, the registered proprietor of a parcel of land situated at 4th Mile, Jalan Astana, Kuching. By an agreement dated 7 November 1974 the said Su'ud bin Haji Hamzah sold to the plaintiff part of the said land. It was further agreed that the said Su'ud bin Haji Hamzah shall immediately apply to the Superintendent of Lands and Surveys Department, Kuching for mutation and sub-division of the said land in accordance with the plan attached to the said agreement and that the sub-lot to be transferred to the plaintiff shall contain 0.26 acres. A sum of RM6,700 was paid by the plaintiff by way of deposit and part payment upon execution of the agreement. The balance was to be paid on the date of issue of the title deed to the said sub-lot by the Lands and Surveys Department.

The plaintiff then lodged a caveat over the said land to prevent any further dealings with it. On 26 April 1976 the letters of administration granted to Su'ud bin Haji Hamzah was cancelled and the defendant was appointed the administrator of the estate in August 1976.

The plaintiff was served with a notice issued by the Assistant Registrar of the Lands & Surveys Department, Kuching on 14 August 1994 informing her that one Ahmat bin Ghani had made application for registration of a memorandum of transfer affecting the said land. It was only upon receipt of the notice dated 3 November 1994 that the plaintiff first came to know that the defendant had entered into an arrangement for the transfer of the said land to Ahmat bin Ghani.

The defendant did not file any affidavit in opposition to the plaintiff's application. As such the facts deposed to in the affidavit of the plaintiff are deemed to be admitted. It is obvious from a perusal of the statement of defence, in particular para. 10 thereof, that the defendant is relying on the issue of limitation, i.e. that the plaintiff's action is statute-barred under the Sarawak Limitation Ordinance (Cap. 49). The other ground that the defendant is relying on is that the plaintiff should have commenced action against the defendant upon the cancellation of the letters of administration granted to the said Su'ud bin Haji Hamzah on 26 April 1976 and the plaintiff's failure to do so amounts to negligence on her part.

I am unable to find any merit in this contention for the revocation of the letters of administration was purely an administration act of the probate officer and this does not by itself constitute a breach of contract on the part of the said Su'ud bin Haji Hamzah. Furthermore, time was not made the essence of the contract nor was any notice given of any intention to rescind the contract. At most the said Su'ud bin Haji Hamzah may be guilty of delay which the plaintiff tolerated. However, the fact that the plaintiff's agreement with the said Su'ud bin Haji Hamzah for the purchase of part of the land took place on 7 November 1974 cannot be ignored. Clearly the agreement took place long before the revocation of the letters of administration to the said Su'ud bin Haji Hamzah on 26 April 1976. All conveyances of any interest in real or personal estate made to a purchaser by a person to whom probate or letters of administration have been granted are valid notwithstanding any subsequent revocation or variation of the probate or administration. See *Halsbury's Laws of England*, 4th Edn., Vol. 17, para. 1069.

Hence the revocation of letters of administration to the said Su'ud bin Haji Hamzah does not affect the agreement entered into between him and the plaintiff as the rights of the plaintiff accrued before such revocation. There was no rescission of the said agreement and the defendant cannot enter into a subsequent agreement with Ahmat bin Ghani and ignore completely the earlier agreement between the said Su'ud bin Haji Hamzah and the plaintiff. It was only on 4 December 1994 that the plaintiff came to know of this latter transaction and under Art. 90 of the Limitation Ordinance (Cap. 49) a three-year limitation period is prescribed for a suit for specific performance of a contract or if no such date is fixed when the plaintiff has notice that performance is refused.

It is an undisputed fact that the plaintiff first came to know that the defendant had entered into an arrangement for the transfer of the said land to Ahmat bin Ghani on 14 December 1994 when he was served a notice issued by the Assistant Registrar of the Lands and Surveys Department, Kuching. Hence time for the institution of the suit for the specific performance of the contract against the defendant begins to run on 14 December 1994. Thus, the plaintiff is well within the three-year limitation period.

Therefore, for the reasons given above I allow the plaintiff's application with costs.